

BEFORE THE TENNESSEE REGULATORY AUTHORITY

NASHVILLE, TENNESSEE

November 27, 2000

IN RE:)	
)	
BELLSOUTH TELECOMMUNICATIONS, INC.)	DOCKET NO.
TARIFF TO OFFER CONTRACT SERVICE)	00-00627
ARRANGEMENT (TN 00-2108-02))	

**ORDER GRANTING APPROVAL OF BELLSOUTH
CONTRACT SERVICE ARRANGEMENT (TN 00-2108-02)**

This matter came before the Tennessee Regulatory Authority ("Authority") at a regularly scheduled Authority Conference on August 15, 2000 on the tariff filing of BellSouth Telecommunications, Inc. ("BellSouth") for approval to offer Contract Service Arrangement No. TN 00-2108-02 ("CSA"). BellSouth filed Tariff No. 00-00627 on July 17, 2000, with a proposed effective date of August 16, 2000.

On August 10, 2000, BellSouth filed a letter in response to a question asked of BellSouth during the August 1, 2000 Authority Conference. In the letter, BellSouth stated:

Specifically, with respect to CSAs presented by BellSouth to prospective customers after August 1, 2000, BellSouth will propose modified termination liability language with regard to services provided within the state of Tennessee that is consistent with the language of the Proposed Settlement Agreement. Because CSA proposals are subject to negotiations, BellSouth cannot ensure that each customer will agree to the modified termination liability language BellSouth

will be proposing. BellSouth, however, will propose such language in both service specific and volume and term CSAs.¹

During the August 15, 2000 Authority Conference, BellSouth explained that the proposal submitted in the August 10th letter does not apply to this CSA because this CSA was in the “pipeline”² prior to August 1, 2000. Thereafter, a lengthy discussion ensued focusing on the fact that BellSouth controls the information regarding how many BellSouth CSAs are in the “pipeline” at present. The Authority once again asked BellSouth whether it would be willing to apply the proposal submitted in the August 10th letter to this CSA. BellSouth declined to do so because such an agreement would force BellSouth to return to the customer once again.

Following this discussion, BellSouth submitted an oral proposal applicable to the CSAs currently in the “pipeline.” Pursuant to the proposal, BellSouth agreed to notify the customers that, in the event of early termination of the CSA, BellSouth would only enforce the lesser of the CSA termination provisions or the termination provisions resulting from the rulemaking in

¹ The *Proposed Settlement Agreement* was entered into between the Staff Investigative Team and BellSouth in Docket No. 00-00170, *Petition to Require BellSouth Telecommunications, Inc. to Appear and Show Cause That Certain Sections of its General Subscribers Services Tariff and Private Line Services Tariff Do Not Violate Current State and Federal Law*. Under the *Proposed Settlement Agreement*, termination charges would not exceed the sum of the discounts received during the previous twelve (12) months of service, the repayment of any waived or discounted nonrecurring charges, and the repayment of a prorated amount of any documented contract preparation, implementation, and tracking, fees and similar charges. The *Proposed Settlement Agreement* also capped termination charges to six percent (6%) of the total tariffed service agreement amount or contract amount. Finally, the *Proposed Settlement Agreement*, only permitted charges to exceed the above amounts upon a demonstration that the unrecovered portion of the customer specific costs incurred to provide the service exceeded the charges as calculated above. During the July 11, 2000 Authority Conference, the Authority unanimously voted to reject the *Proposed Settlement Agreement* and a majority of the Directors voted to dismiss Docket No. 00-00170. For more information on this decision see the *Order Rejecting Proposed Settlement Agreement and Dismissing Show Cause Petition* filed in Docket No. 00-00170 on October 4, 2000.

² A CSA enters the “pipeline” when BellSouth presents the CSA to the customer. The CSA remains in the “pipeline” throughout the negotiation process between BellSouth and the customer and exits the “pipeline” upon receiving the Approval of this Authority.

Docket No. 00-00702³. This proposal, explained BellSouth, would prevent it from going back to the customer to obtain the customer's agreement or signature.

Based upon careful consideration of the tariff filing and the attachments thereto, the Authority makes the following findings and conclusions:

1. The purpose of this CSA is to provide Frame Relay service to the customer identified in the filing. Frame Relay service utilizes a special network, separate from the public switched network, for providing customers with high-speed data transport between multiple locations.
2. The term of this CSA is thirty-six (36) months with a one-year renewal option. If the customer exercises the renewal option, BellSouth will file the renewed contract with the Authority for approval.
3. Through this CSA, BellSouth is offering the customer a waiver of non-recurring charges and a nine and one-half percent (9.5%) discount off standard tariff rates.
4. If the customer disconnects any of the services prior to the expiration of the term of the CSA, the termination provisions require that the customer pay BellSouth an amount equal to the amount of the previously waived non-recurring charges plus ninety percent (90%) of the remaining monthly recurring contract payments.
5. The Authority accepts BellSouth's oral proposal presented to the Authority during the August 15, 2000 Authority Conference. BellSouth shall provide to the Authority copies of all letters notifying the customers of BellSouth's agreement as reflected in this Order.

³ *Rulemaking Proceeding - Regulations for Term Arrangements for Telecommunications Services*, Docket No. 00-00702, was opened by the Directors to establish rules in order to regulate the use of CSAs and tariff term plans by Independent and Competing Local Exchange Carriers.

6. BellSouth provided an addendum executed by the customer stating that the customer was aware of competitive alternatives available to it in Tennessee and that the customer and BellSouth have agreed on the termination provisions and that the termination charges represent a reasonable estimate of BellSouth's damages in the event of termination.

7. BellSouth supplied cost data which indicates that the price of services offered under the CSA exceed their long-run incremental costs. This data indicates that BellSouth has complied with the statutory price floor established in Tenn. Code Ann. § 65-5-208(c).

8. No parties sought to intervene in this docket.

Based upon the foregoing, the Directors unanimously⁴ determined that the CSA in this docket should be granted.

⁴ Chairman Kyle made the initial motion to approve the Tariff, BellSouth's proposal notwithstanding. In doing so, she stated:


My position is that I'm going to be consistent and approve this, and I will just state to the public again, at this time I feel like someone is getting lower rates out there. I was the one who kept raising the question, why aren't there others objecting, why aren't these other companies in here objecting, and it's obvious, because they're doing [it] themselves.

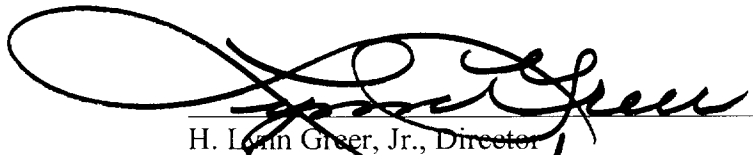
So we're going to make a rule that's going to apply to everybody. It's a give-and-take situation. That's where I stand. I'm going to keep this position, and vote today to approve somebody in the state of Tennessee is getting a lower rate. They don't have to sign that contract.

Transcript of Authority Conference, p. 47-48 (August 15, 2000). Director Greer seconded the motion with the understanding that BellSouth will comply with its proposal and will send the Authority copies of the letters notifying the customers of the proposal. *See id.* at 48-49. Director Malone voted in favor of the motion reiterating that he has consistently voted against approval of specific service CSAs with 90% to 100% buy out provisions because in most instances the agency has not been provided sufficient information to make a determination as to whether or not a particular CSA is anticompetitive. Nevertheless, in the instance of this CSA, BellSouth put forth a compromise position that protected customers from 90% to 100% buy out provisions thereby enabling him to vote with the majority for approval of the CSA.

IT IS THEREFORE ORDERED THAT:

BellSouth Telecommunications, Inc.'s Tariff No. 00-00627, which seeks approval of Contract Service Arrangement No. TN 00-2108-02, is hereby granted subject to BellSouth notifying the customer in writing that BellSouth waives any right to collect termination charges higher than the lesser of the CSA termination provisions or the termination charges established in Docket No. 00-00702 and agreeing to send copies of the notification letters to the Authority.


Sara Kyle, Chairman


H. Lynn Greer, Jr., Director


Melvin J. Malone, Director

ATTEST:


K. David Waddell, Executive Secretary